

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA

In the matter of an Application for order in the nature of Writ of Certiorari under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka,

CA/WRIT/184/23

Rankoth Gedara Kulathunga

No. 22/105/2, Dematamalpellassa

Uhana

Petitioner

Vs.

1. Rankoth Gedara Ariyawansha
No. 22/105, Demaamalpellassa
Uhana
2. Rankoth Gedara Dinesha Dharshani
No. 22/105, Demaamalpellassa
Uhana
3. The Divisional Secretary
Divisional Secretariat
Wwgampaththu-North
Uhana
4. The Commissioner General of Land
Land Secretariat
No. 1200/, Mihikatha Medura
Rajamalwatta Road, Baththaramulla.

Respondents

Before : N. Bandula Karunarathna, P/CA, J.
B. Sasi Mahendran, J.

Counsel: J.P. Gamage with Theekshana Ranaweera for the Petitioners
Anura Gunaratne for the 2nd Respondent
Avanthi Weerakoon, SC for the State

Supported On: 22.10.2024

Written 09.12.2024 (by the Petitioner)
Submissions: 28.10.2024 (by the 2nd Respondent)
On 28.10.2024 (by the 3rd and 4th Respondents)

Order On: 18.12.2024

B. Sasi Mahendran, J.

ORDER

This Order pertains to whether notice is to be issued and interim reliefs are to be granted.

The Petitioner instituted this application by petition dated 31.03.2023 praying for the following reliefs:

- a. Issue notice to the Respondents
- b. Issue a mandate in the nature of a writ of certiorari to quash the decision contained in document marked as “P7” Ampara Land Registry Volume/Folio LDO H 24/83 to transfer the original ownership of the property in question to the 1st and the 2nd Respondents
- c. Grant costs, and

d. Such other and further relief as to your Lordships' Court shall seem meet.

The facts of this case are briefly as follows:

According to the petition, the Petitioner claims to be the eldest son of the one Rankoth Gedara Nandasena who received two Grants for two lots of land by Grant bearing Nos. Am/Pra/3273 and Am/Pra/3265. The Petitioner states that for the said Grant No. 3273, the Petitioner's father had nominated the Petitioner's two brothers namely Rankoth Gedara Somarathne and Rankoth Gedara Ariyawansa as the successors to the said land and such nomination had been registered in 1991. The Petitioner further avers that he has been cultivating two acres of the said land since 1972 with his father. The Petitioner states that, the said original grantee passed away on 04.07.1994.

According to the petition, the 1st and 2nd Respondents had made an application under Section 49 of Land Development Ordinance No. 19 of 1935 as amended (hereinafter referred to as the Ordinance) to the 3rd Respondent on 06.03.2020 requesting to be the successors of the said land in question on the basis they were nominated by the original grantee. Accordingly, steps were taken. The Petitioner states that after considering the application, the 3rd Respondent has taken steps under Section 58 of the Ordinance to effect their succession and sent it for registration to the Registrar of Land which was accordingly effected by registering it in the Land registry on 10.06.2021.

The Petitioner states that by letter 23.08.2022, the Petitioner informed the 3rd Respondent that the Petitioner has been in possession of the land in question for the last 40 years and that the decision of the 3rd Respondent is contrary to Section 68 of the Ordinance, thereby requesting to cancel the said decision to register said land and act under Section 72 of the Ordinance on the premise he is the eldest son of the original grantee.

Further, the Petitioner averred that the 1st and 2nd Respondents have filed a case against the Petitioner in the District Court of Ampara bearing No. 873/L for a declaration of title to the land in question and to eject the Petitioner from the land in question.

The main contention of the Petitioner is that the decision of the 3rd Respondent marked as P7, to accept and register the 1st and 2nd Respondents as successors or owners of the said land is contrary to Section 68 of the Ordinance as they have failed to make an application within the stipulated time.

In this context, the Petitioner has invoked the jurisdiction of this Court seeking a writ of Certiorari to quash the decision marked P7.

One of the main objections taken by the Respondents is that though the Petitioner claims to be the eldest son of the deceased original grantee, he has failed to provide any evidence before this Court to establish his rights. Further, the Respondents aver that the document marked P7 that is sought to be quashed by the Petitioner is not a decision but an extract from the folio of the Ampara Land Registry, involving a ministerial act done by the Land Registrar on the direction of the 3rd Respondent. However, the Petitioner has failed to challenge and place the decision of the 3rd Respondent accepting the 1st and 2nd Respondents as the successors to the land in dispute before this Court.

In this context, the question is whether this Court is inclined to issue a Writ of Certiorari as sought by the Petitioner. The concept of availability of Certiorari is considered in the following scholarly authority.

Sunil F.A.Coorey, *Principles of Administrative Law in Sri Lanka*, Fourth Edition Volume II- Page 911, states;

“The circumstances in which certiorari and prohibition will be available have been summed up by Lord Justice Atkin, an English judge, in the following famous words which on numerous occasions have been cited and followed by our courts:

" Whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these Writs."

This dictum has been analyzed as follows as laying down four conditions which must be satisfied for certiorari or prohibition to issue:-

" Whenever any body of persons, (firstly) having legal authority, (secondly) to determine questions affecting the rights of subjects, (thirdly) having the duty to act judicially, (fourthly) act in excess of their legal authority, they are subject to the controlling jurisdiction exercised by these writs."

In the instant case, the non-availability of the decision made by the 3rd Respondent is fatal.

Be that as it may, the Petitioner has failed to establish that he is the eldest son of the deceased original grantee. To be eligible under Section 72 of the Ordinance, the Petitioner in this case needs to prove that the nominated successors failed to succeed.

For easy reference, Section 72 is reproduced thus:

"If no successor has been nominated, or if the nominated successor fails to succeed, or if the nomination of a successor contravenes the provisions of this Ordinance, the title to the land alienated on a permit to a permit-holder who at the time of his or her death was paying an annual instalment by virtue of the provisions of section 19 or to the holding of an owner shall, upon the death of such permit-holder or owner without leaving behind his or her spouse, or, where such permit-holder or owner died leaving behind his or her spouse, upon the failure of such spouse to succeed to that land or holding, or upon the death of such spouse, devolve as prescribed in rule 1 of the Third Schedule."

In the instant case, upon the application of the 1st and 2nd Respondents to the 3rd Respondent, the 3rd Respondent has alienated the land in suit under Section 84 (b) of the Ordinance for due registration of their nomination which reads as follows:

“If the permit-holder is not survived by his or her spouse or if the spouse does not succeed to the land, any other person who is a duly nominated successor of the deceased permit-holder shall be entitled to succeed to that land on such person obtaining a permit from the Government Agent under the provisions of this Ordinance to occupy that land.”

Application of the above Sections in conjunction shows that the 1st and 2nd Respondents who are the nominated successors to the land in dispute have lawfully succeeded to the land. Thus, the Petitioner’s claim does not stand.

This Court is also mindful that the Petitioner was given the land described in Grant No. 3265 on the basis that he was the nominee of the said original grantee namely Rankoth Gedara Nandasena on 12.05.1995.

For the above said reasons, we dismiss the application with costs of Rs. 100,000/-

JUDGE OF THE COURT OF APPEAL

N. BandulaKarunarathna (P/CA), J.

I AGREE

PRESIDENT OF THE COURT OF APPEAL